

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR.**

Service Appeal No. 1423/2023

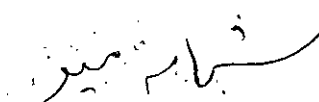
Shabana Mir.....(Appellant)

**V E R S U S**


Chief Secretary etc.....(Respondents)

**I N D E X**

<b>S.No</b>	<b>Description of Documents</b>	<b>Annex</b>	<b>Pages</b>
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Appellant

Through

  
**Inayat Ullah Khan**  
Advocate Supreme Court  
Of Pakistan.  
LLM (UK).  
Cell No. 0333-9059746

Dated: 21/10/2023

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**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR.**

Khyber Pakhtunkhwa  
Service Tribunal

Service Appeal No. 1423/2023

Case No. 8469

Date 23-10-23

Shabana Mir.....(Appellant)

**V E R S U S**

Chief Secretary etc.....(Respondents)

**REJOINDER VIZ A VIZ REPLY  
SUBMITTED BY RESPONDENT NO. 5.**

**Respectfully Sheweth:**

**Preliminary Objections:**

1. All preliminary objections "a" to "d" are incorrect, hence denied.

However, it is pertinent to mention that W.P. No. 2229-P/2023 was notice to the officials respondents to the extent of questioning the varies of Section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 and the Advocate General was put on notice in terms of Order-XXVIIA of the Civil Procedure Code, 1908.

That according to Para 7 of Writ Petition it was mentioned that the appellant earlier approached Provincial Services Tribunal KP Peshawar against the impugned order dated 30/03/2023 but the

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appeal was returned on the ground of that a period of 90 days has not been elapsed, therefore the appeal was declared premature.

Preliminary objections "b" and "c" are incorrect and wrongly setup just to twist the matter. Matter is relating to illegal posting and transfer of the appellant, therefore having no relevancy with the merits of the case. The appellant is performing her duties to the entire satisfaction of her immediate superiors without any complaint and in this regard the Incharge School Teacher GGHS Dab Kor Miss Seema Wazir and other school teachers have reposed their full confidence upon the discharge of assigned duties and responsibilities wholeheartedly. (Copy of statement is enclosed as "R/1").

**ON FACTS:**

1. Para No. 1 to 6 of the reply are incorrect, hence denied.

It is pertinent to mention that respondent No. 5 was transferred vide order dated 22/03/2023 from GGHS Dab Kor to GGHS Elam Kor because she was performing her duties against the wrong post of Bio-Chemistry and upon recruitment of the Subject

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Specialist SST (Bio-Chemistry) BPS-16 consequently she was transferred to depute Subject Specialist Teacher to teach Bio-Chemistry to the students, thereafter later-on she used political influence to cancel her transfer order and the appellant was illegally transferred. Upon realization of the mistake by the official respondents the illegal transfer order of the appellant was cancelled vide and her posting was restored vide order dated 29/03/2023 already enclosed with the main appeal. This indicates the highhandedness of the respondent No. 5.

It is pertinent to mention that private respondent No. 5 was relived vide order dated 24/03/2023 in the light of transfer order dated 22/03/2023. (Copy of reliving order 24/03/2023 in respect of Mst. Nazia Rehman SST (G) BPS-16 is enclosed as "R/2").

2. That the appellant being an unmarried female employee was to be posted at the place of residence of her family or parents, therefore, the impugned transfer order dated 30/03/2023 is violative of Clause (x) of the Posting and Transfer Policy promulgated by the Provincial Government.

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**“Clause (x). All the posting/ transferring authorities may facilitate the posting/ transfer of the unmarried female government servants at the station of the residence of their parents”.**

“Unmarried female employee was to be posted at the place of residence of her parents of family --- Transfer of employee was declared against the policy decision of the Government --- Constitutional petition was allowed, in circumstances” (2021 PLC (C.S) 374)

(Copy of relevant judgment reported in 2021 PLC (C.S) 374 is enclosed for perusal of this Hon'ble Court as “R/3”).

3. That it is also absurd to allege that the appellant's sister is performing her duties as Principle, therefore favouring her in the matter is without substance for the simple reason that the appellant's sister is not the competent authority to make posting and transfer order in the matter rather it is the Director and Secretary Elementary and Secondary Education being the competent and appellate authority having exclusive jurisdiction to make posting and transfer of the teachers.

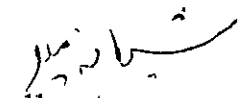
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It is further important to state that appellant is serving as SST (G) (BPS-17) while private respondent is serving as SST (BPS-16) therefore no compression can be made between the posting and transfer of the two teachers as the appellant was serving as SST (BPS-17) against the regular position at GGHS Dab Kor while respondent No. 5 was working in the capacity as a stop gap arrangement and the moment when SST Subject Specialist (Bio-Chemistry) were recruited she was resultantly transferred from GGHS Dab Kor to GGHS Elam Kor.

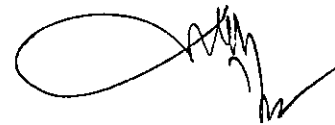
**REPLY ON GROUNDS:**

All grounds "A" to "D" as setup in the reply are incorrect while the grounds raised in the appeal are correct.

Keeping in view what has stated above this rejoinder may kindly be treated as part and parcel of the main appeal.

  
Appellant

Through



Dated: 21/10/2023

**Inayat Ullah Khan**  
Advocate Supreme Court  
Of Pakistan.  
LLM (UK).

(6)

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR.**

Service Appeal No. 1423/2023

Shabana Mir.....(Appellant)

**V E R S U S**

Chief Secretary etc.....(Respondents)

**AFFIDAVIT**

I, Mst. Shabana Mir D/o Zakam Khan Wazir R/o House No. 32, Street No. 5, Shaheen Housing Society, Mathra, District Peshawar SST (G) BPS-17, GGHS Dab Kor, Mohmand, do hereby solemnly affirm and declare on oath that the contents of the **Rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

*Shabana Mir*

**DEPONENT**

CNIC No. 17301-1399983-8



21.10.23

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R/1

Subject:- Statment about Miss Seema Wazir incharge G.G.H.S Dab Kor.

Miss Seema Wazir incharge of School from January 2021 to 18-07-2023

during the said period Miss Shabana didn't have special favour from her Sister Miss Seema Wazir.

She assigned different responsibilities of the school to the staff according to their abilities.

We all include Miss Shabana Mir SS performed their duties wholeheartedly.

Miss Ejaz Begum SST  
 Miss Nighai Afshan SDM  
 Miss Roqayya SST  
 Miss Kalsoom ET  
 Miss Rabia CT  
 Miss Shabana Malik SST

Miss Fatima SST (SC)  
 Miss Parveen SCT  
 Miss Sahira  
 Miss Ayesha Alam PET

Verified  
 Principal  
 G.G.H.S Dab Kor  
 District Mohmand  
 10-10-2023



R/2

(8)

**RELIEVING CHIT.**

Mst. Nazia Rehman SST(G) BPS-16 You have been Transfer/adjusted from GGHS Dab Kor to GGHS Elam kor Mohmand Tribal District Vide: DEO(F) Mohmand Endstt No. 3812-17 /Adjustment/SST/2022 Dated: 22.03.2023.

Therefore, You have relieved from her duties on 24 / 03 / 2022 (F.N) and report to the said Center for arrival.

Enclost: No. 407-13 / Dated 24 / 03 / 2023

Copy forwarded for information & n/a to the:-

1. Director of Education Elementary & Secondary KPK Peshawar.
2. DMO EMA Mohmand.
3. District Account officer Mohmand Tribal District.
4. District Education Officer(F) Mohmand Tribal District.
5. Head Mistress GGHS Elam Kor District Mohmand.
6. Office Record.

*Nazia*  
Principal,  
GGHS Dab Kor,  
District Mohmand

2021 P L C (C.S.) 374

[Sindh High Court]

Before Muhammad Shafi Siddiqui and Adnan-ul-Karim Memon, JJ

Ms. FARYAL KALEEM SHAIKH

Versus

FEDERAL OMBUDSMAN FOR PROTECTION AGAINST HARASSMENT WOMEN AT THE WORKPLACE through Chairperson, Government of Pakistan and another

Constitutional Petition No.D-1310 of 2019, decided on 17th September, 2019.

Civil service---

---Posting and transfer of female government employee---Requirements---Petitioner being unmarried female employee was transferred from the place of residence of her parents---Contention of employee was that she had been transferred against policy decision of the Government---Validity---Transfer was an incident of service and transfer policy did not vest an enforceable right in favour of employee---Unmarried female employee was to be posted at the place of residence of her parents or family---Transfer of employee was declared against the policy decision of the Government---Constitutional petition was allowed, in circumstances.

Ali Asadullah Bullo for Petitioner.

Muhammad Nishat Waris, D.A.G. for Respondents.

Date of hearing: 17th September, 2019.

**JUDGMENT**

**ADNAN-UL-KARIM MEMON, J,---**By means of this writ petition, the petitioner has challenged her transfer and posting order, whereby she was relieved and posted at Federal Ombudsman Secretariat for protection against harassment for Women at Workplace Peshawar against a vacant position of Assistant Registrar BPS-17 vide Notification dated 31.1.2019 and seeking a mandamus declaring that her posting order is against the Office Memorandum dated 17th December, 1999, whereby guideline has been provided for posting and transfer of unmarried female government servants at the station of resident of their parents/family.

2. Mr. Ali Asadullah Bullo learned Counsel for the petitioner has argued that basically this writ petition is filed seeking a Writ of mandamus to call for the relevant records relating to her transfer and posting by dislocating her at the station of resident of her parents/family, strictly in the line with office Memorandum dated 17th December, 1999 and quash or set aside the same holding it as arbitrary, illegal, unjust and violative of fundamental rights of the petitioner; that an appropriate direction may be issued to the respondents to continue the petitioner in the office of Federal Ombudsman Secretariat for protection against harassment for Women at Workplace, Regional Office Karachi. He further stated that the Petitioner was erroneously transferred from her present posting in violation of the aforesaid policy, which is also applicable in the Respondent-department. It has been contended by the learned Counsel for petitioner that she was initially appointed as an Assistant Registrar in BPS-17 with the respondents on 17th May 2017; that she has been discharging her duties to the best satisfaction of her superiors and everyone concerned; Therefore, he contends that picking and choosing her only for transfer is arbitrary action of the respondents; that the Establishment Division Ministry of Finance had issued a letter on 17.12.1999, wherein a policy was made that female employees of Public Sector entities, married or unmarried, should be posted near to their husband or parents as far as possible; that in pursuance of the said transfer policy, wherein it makes abundantly clear the aforesaid proposition. Therefore, the impugned transfer order is liable to be set aside declaring it as illegal and arbitrary. Learned counsel for the petitioner submits that subsequent to issuance of the transfer order, the petitioner has submitted a representation to the respondents on 31.1.2019 and the respondents have rejected the same vide proceedings dated 6.2.2019.

3. At the very outset, Mr. Muhammad Nishat Warsi Learned DAG has conceded the legal position of the case; however, he raised the question of maintainability on the ground that Federal Ombudsman is

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competent to transfer the employees of the Regional Offices to other concerned Regional Offices in order to maintain the administration efficiently and effectively. He next submitted that on administrative grounds, the petitioner was transferred from Karachi to Peshawar and there is no malice, arbitrary action and discrimination against the petitioner; that several officers are transferred to various places and they are made in accordance with exigencies of service and for administrative reasons. Learned DAG also submits that normally the Courts should not interfere with the transfer orders, but if some mala fides are attributed, for the proven mala fides only, the Courts can interfere with the transfer orders; that there are no merits in the instant writ petition and the same is liable to be dismissed.

4. This Court, having considered the rival submissions made by learned counsel for both parties, is of the considered view that the policy decision as contained in the Office Memorandum dated 17th April, 1999 is clear in its terms and fully applicable in the case of petitioner. For convenience sake, an excerpt of the Office Memorandum is reproduced as under:-

"2. The above guide-lines are subject to the following conditions:-

- i. Posting of unmarried female Government servants at the station of residence of their parents /family should not be made by dislocation of any Government servants already serving at a particular station unless his transfer is necessitated by compelling reasons of public interest or within the frame work of general policy of posting and transfer."

5. We are cognizant of the fact that the transfer is an incident of service and the transfer policy/guidelines do not vest an enforceable right in favour of the employee, however, in case of unmarried female employee an exception has been carved out as the Petitioner has specifically pleaded in her application dated 31st January, 2019 (available at page-43 of the Memo of Petition) that she is unmarried, wholly dependent and residing along with her aged parents and requested the Respondent-department for consideration of her posting at Karachi.

6. We have noticed that the Establishment Rules Chapter-III, Transfer, Posting and Deputation Rules at Sr. No.5 (2) (ii) provides posting of unmarried female, government servant at the place of residence of parents of the family, the aforesaid policy is a known and followed practice of posting in service jurisprudence. At this juncture, learned Counsel for the petitioner pointed out that that the post of Assistant Registrar BPS-17 at Regional Office Karachi is Karachi based post as such the petitioner cannot be transferred out of Cadre post at Peshawar. In support of his contention he relied upon the Appointment order dated 17.5.2017 available at page 25 of memo. of petition. Be that as it may, we have to see the policy decision of Government of Pakistan on the aforesaid proposition, which has already been discussed in the preceding paragraph. An excerpt of the Estacode is reproduced as under:-

"2. The above guidelines are subject to the following conditions:-

(i) Posting of unmarried female government servants at the station of residence of their parents/family should not be made by dislocation of any government servant already serving at a particular station unless his transfer is necessitated by compelling reasons of public interest or within the framework of general policy of postings and transfer.

(ii) The prescribed selection authority should be consulted in each case.

3. It has also been decided that the above guidelines shall also be followed by autonomous/semi-autonomous bodies/ corporations etc. under the control of the Federal Government."

7. In the light of Office Memorandum dated 17th December, 1999 as discussed supra the case of Petitioner explicitly falls within Paragraph 2(i), as such Notification for transfer of the petitioner at Peshawar is declared against the policy decision of the Government of Pakistan, Cabinet Secretariat Establishment Division.

8. The Petition is allowed as prayed.

9. These are the reasons of our short dated 17.9.2019, whereby we have allowed the captioned petition.

ZC/F-3/Sindh

Petition allowed.